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Attorney for Plaintiffs
XIAOLEI CHEN
ZHEN TAO

ORIGINAL
FILED

JUN - 4 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHA

XIAOLEI CHEN
ZHEN TAO

Plaintiffs,

vs.

Michael Chertoff, Secretary of the Department
of Homeland Security;
Emilio T. Gonzalez, Director, U.S. Citizenship
and Immigration Services;
Robin Barrett, Field Office Director, San
Francisco District Office, U.S. Citizenship and
Immigration Services;
Robert S. Mueller,
Director of Federal Bureau of Investigation

Defendants.

Case No.:

07 - 2901
PETITION FOR HEARING ON
NATURALIZATION APPLICATION
UNDER 8 U.S.C. § 1447(B)

COME NOW Xiaolei CHEN and Zhen TAO, Plaintiffs in the above-styled and numbered cause, and for cause of action would show to the Court the following:

1. This action is brought for a hearing to decide Plaintiffs' naturalization applications due to Defendants' failure to adjudicate the application within 120 days after the first examination in violation of the Immigration and Nationality Act ("INA") § 336(b) and 8 U.S.C. §1447(b).

PARTIES

2. Plaintiffs Xiaolei CHEN (A75 657 778) and Zhen TAO(A75 643 517), wife and husband and citizens of the People's Republic of China, are lawful permanent residents of the United States. On January 27, 2006, Plaintiff Xiaolei CHEN was interviewed for her naturalization

1 application (**Exhibit 1**) and on December 15, 2005, Plaintiff Zhen TAO was interviewed for his
2 naturalization application (**Exhibit 2**). Defendants have failed to make a decision on the
3 application within 120 days after the examination.

4 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security
5 (DHS), and this action is brought against him in his official capacity. He is generally charged with
6 enforcement of the Immigration and Nationality Act, and is further authorized to delegate such
7 powers and authority to subordinate employees of the DHS. 8 U.S.C. §1103(a); 8 C.F.R. § 2.1.

8 4. Defendant Emilio T. Gonzalez, is the Director of the United States Citizenship and
9 Immigration Service (USCIS), an agency within the DHS to whom the Secretary's authority has in
10 part been delegated and is subject to the Secretary's supervision. Defendant Director is generally
11 charged with the overall administration of benefits and immigration services. 8 C.F.R. § 100.2(a)

12 5. Defendant Robin Berrett, Field Office Director of San Francisco District Office, is an
13 official of the USCIS generally charged with supervisory authority over all operations of the
14 USCIS within her District with certain specific exceptions not relevant here. 8 C.F.R.
15 §100.2(d)(2)(ii). As will be shown, Defendant Officer is the official with whom Plaintiffs'
16 naturalization applications remain pending.

17 6. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigations (FBI),
18 the law enforcement agency that conducts security clearances for other U.S. government agencies,
19 such as the Department of State. As will be shown, Defendant has failed to complete the security
20 clearances on Plaintiff's cases.

21 JURISDICTION

22 7. Jurisdiction in this case is proper under the INA § 336(b) and 8 U.S.C. §1447(b). Relief is
23 requested pursuant to said statutes.

24 VENUE

25 8. Venue is proper in this court, pursuant to 8 U.S.C. §1447(b), in that Plaintiffs may request
26 a hearing on the matter in the District where Plaintiffs reside.

27 CAUSE OF ACTION

28 9. Plaintiffs are lawful permanent residents of the United States. On January 27, 2006,

1 Plaintiff Xiaolei CHEN was interviewed for her naturalization application (**Exhibit 1**) and on
2 December 15, 2005, Plaintiff Zhen TAO was interviewed for his naturalization application
3 (**Exhibit 2**).

4 10. Upon inquiries with the FBI, Plaintiffs were informed that their Applications for
5 Naturalization are pending for the background checks (**Exhibit 3**).

6 11. Plaintiff Xiaolei CHEN's application for naturalization has now remained un-adjudicated
7 for 16 months from the date of interview, and Plaintiff Zhen TAO's application for naturalization
8 has now remained pending for 17 months from the date of interview.

9 12. Defendants have sufficient information to determine Plaintiffs' eligibility pursuant to
10 applicable requirements.

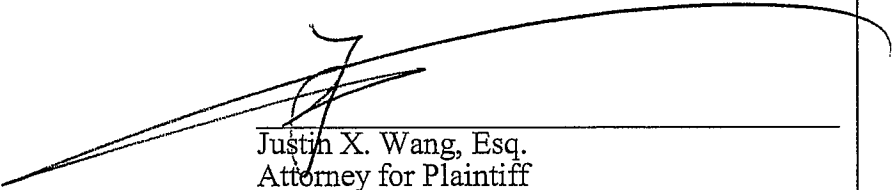
11 13. Defendants, in violation of 8 U.S.C. § 1447 (b), have failed to make a determination on
12 Plaintiff's naturalization application within the 120-day period after the date of examination.

13 **PRAYER**

14 14. WHEREFORE, in view of the arguments and authority noted herein, Plaintiffs
15 respectfully pray that the Defendants be cited to appear herein and that, upon due consideration,
16 the Court enter an order adjudicating their naturalization applications. In the alternative, the Court
17 may remand requiring Defendants to immediately adjudicate Plaintiffs' naturalization
18 applications. In addition, Plaintiffs request an award of reasonable attorney's fees under the Equal
19 Access to Justice Act and such other relief at law and in equity as justice may require.

20
21
22 Dated: May 31, 2007

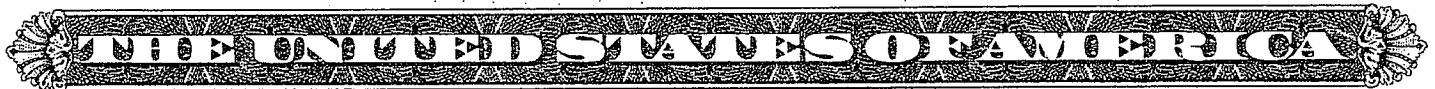
Respectfully submitted,

23
24
25 
26 Justin X. Wang, Esq.
27 Attorney for Plaintiff
28

LIST OF ATTACHMENTS

<i>Exhibit</i>	<i>Description</i>
1	N400 Application Receipt and Interview Notice for Xiaolei CHEN
2	N400 Application Receipt and Interview Notice for Zhen TAO
3	Evidence of Inquiries Made by Plaintiffs re: N400 Applications

Ex. 1



Receipt			NOTICE DATE September 13, 2005
CASE TYPE N400 Application For Naturalization			INS A# A 075 657 778
APPLICATION NUMBER WSC*001372989	RECEIVED DATE August 30, 2005	PRIORITY DATE August 30, 2005	PAGE 1 of 1

APPLICANT NAME AND MAILING ADDRESS
XIAOLEI CHEN
c/o XIAOLEI CHEN
5851 CARMEL WAY
UNION CITY CA 94587

PAYMENT INFORMATION:
Single Application Fee: \$390.00
Total Amount Received: \$390.00
Total Balance Due: \$0.00

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The above application has been received by our office and is in process. Our records indicate your personal information is as follows:

Date of Birth: October 26, 1973  
Address Where You Live: 5851 CARMEL WAY  
UNION CITY CA 94587

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 460 days of this notice.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit INS at [www.ins.usdoj.gov](http://www.ins.usdoj.gov). Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:  
US IMMIGRATION AND NATURALIZATION SERVICE  
CALIFORNIA SERVICE CENTER  
P.O BOX 10400  
LAGUNA NIGUEL CA 92607-

INS Customer Service Number:  
(800) 375-5283

APPLICANT COPY

WSC\$001471911 WSCG000062596

Department of Homeland Security  
U.S. Citizenship and Immigration Services

# N-652, Naturalization Interview Results

A#:

On JUN 27 2007, you were interviewed by USCIS officer Little

A075657778  
A075657778

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to \_\_\_\_\_ speak/ \_\_\_\_\_ read/ \_\_\_\_\_ write \_\_\_\_\_ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your \_\_\_\_\_ English ability/ \_\_\_\_\_ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.
- A) \_\_\_\_\_ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.
- B) ☒ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

PENDING FOR  
SECURITY CHECKS

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

Ex. 2





|                                                  |                                  |                                   |                |
|--------------------------------------------------|----------------------------------|-----------------------------------|----------------|
| Receipt                                          |                                  | NOTICE DATE<br>September 13, 2005 |                |
| CASE TYPE<br>N400 Application For Naturalization |                                  | INS A#<br>A 075 643 517           |                |
| APPLICATION NUMBER<br>WSC*001372990              | RECEIVED DATE<br>August 30, 2005 | PRIORITY DATE<br>August 30, 2005  | PAGE<br>1 of 1 |

APPLICANT NAME AND MAILING ADDRESS

ZHEN TAO  
c/o ZHEN TAO  
5851 CARMEL WAY  
UNION CITY CA 94587

PAYMENT INFORMATION:

Single Application Fee: \$390.00  
Total Amount Received: \$390.00  
Total Balance Due: \$0.00

|||||

The above application has been received by our office and is in process. Our records indicate your personal information is as follows:

Date of Birth: July 05, 1972  
Address Where You Live: 5851 CARMEL WAY  
UNION CITY CA 94587

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 460 days of this notice.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit INS at [www.ins.usdoj.gov](http://www.ins.usdoj.gov). Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

**INS Office Address:**  
US IMMIGRATION AND NATURALIZATION SERVICE  
CALIFORNIA SERVICE CENTER  
P.O BOX 10400  
LAGUNA NIGUEL CA 92607-

**INS Customer Service Number:**  
(800) 375-5283

**APPLICANT COPY**

WSCS001471912 WSCG000062596

Department of Homeland Security  
U.S. Citizenship and Immigration Services

# **N-652, Naturalization Interview Results**

A#: 75 643 517

On DEC 15, you were interviewed by USCIS officer MAGTANGGOL ACOL RONQUILLO.

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to        speak/        read/        write        English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your        English ability/        knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A)        **Congratulations! Your application has been recommended for approval.** At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B)        A decision cannot yet be made about your application.

*SECURITY CHECK*

It is very important that you:

- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

**NOTE:** Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

Ex. 3



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

August 23, 2006

MR. XIAOLEI CHEN  
5851 CARMEL WAY  
UNION CITY, CA 94587

Request No.: 1056389- 000  
Subject: CHEN, XIAOLEI

Dear Requester:

- ☒ This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- ☐ For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- ☐ To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant to Title 28, United States Code 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- ☐ If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- ☒ We are searching the indices to our central records system at FBI Headquarters for the information you requested, and will inform you of the results as soon as possible.
- ☐ Processing delays have been caused by the large number of requests received by the FOIPA. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your patience is appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over the "Sincerely yours," text.

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

MR. XIAOLEI CHEN  
5851 CARMEL WAY  
UNION CITY, CA 94587

August 29, 2006

Request No.: 1056389- 000  
Subject: CHEN, XIAOLEI

Dear Requester:

This is in response to your Freedom of Information-Privacy Acts (FOIPA) request noted above.

To promptly respond to requests, we concentrate on identifying main files in the central records system at FBI Headquarters. No records responsive to your FOIPA request were located by a search of the automated indices.

You may file an administrative appeal by writing to the Co-Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is placed above the typed name.

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

Enclosure

FORTNEY PETE STARK  
13TH DISTRICT, CALIFORNIA

COMMITTEE ON  
WAYS AND MEANS

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CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

239 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-5065

39300 CIVIC CENTER DRIVE, SUITE 220  
FREMONT, CA 94538  
(510) 494-1388

PETEMAIL@MAIL.HOUSE.GOV

December 12, 2006

Xiaolei Chen  
5851 Carmel Way  
Union City, CA 94587

Dear Ms. Chen:

Ref: A75 657 778

Thank you for contacting me for assistance.

I have given the information you provided to the appropriate authority. They are aware of my interest in the case, and I'll let you know as soon as I receive a reply. If I have not received a response after thirty (30) days, I will make a follow-up inquiry on your behalf.

Sincerely,



Pete Stark  
Member of Congress

FHS/js

FORTNEY PETE STARK  
13TH DISTRICT, CALIFORNIA

COMMITTEE ON  
WAYS AND MEANS

JOINT COMMITTEE  
ON TAXATION

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WASHINGTON, DC 20515

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FREMONT, CA 94538  
(510) 494-1388

PETEMAIL@MAIL.HOUSE.GOV

April 17, 2007

Xiaolei Chen  
5851 Carmel Way  
Union City, CA 94587

Dear Ms. Chen:

Ref: A75 657 778

In reply to my inquiry on your behalf, the Federal Bureau of Investigation has informed me that your case is pending resolution of the background check. A final decision cannot be made on any application until all national security checks are complete. Various authorities in Washington DC are involved and there is no estimated processing time for completion of this action.

I understand that this may be discouraging, but processing cannot resume until all security clearances have been resolved. If you have not received correspondence from the FBI by September please contact my district office and I will make a follow-up inquiry.

Sincerely,



Pete Stark  
Member of Congress

FHS/iai



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

August 21, 2006

MR. ZHEN TAO  
5851 CARMEL WAY  
UNION CITY, CA 94587

Request No.: 1056234- 000  
Subject: TAO, ZHEN

Dear Mr. Tao:

- ☒ This acknowledges receipt of your Freedom of Information-Privacy Acts (FOIPA) request to the FBI. The FOIPA number listed above has been assigned to your request.
- ☐ For an accurate search of our records, please provide the complete name, alias, date and place of birth for the subject of your request. Any other specific data you could provide such as prior addresses, or employment information would also be helpful. If your subject is deceased, please include date and proof of death.
- ☐ To make sure information about you is not released to someone else, we require your notarized signature or, in place of a notarized signature, a declaration pursuant to Title 28, United States Code 1746. For your convenience, the reverse side of this letter contains a form which may be used for this purpose.
- ☐ If you want the FBI's Criminal Justice Information System (CJIS) to perform a search for your arrest record, please follow the enclosed instructions in Attorney General Order 556-73. You must submit fingerprint impressions so a comparison can be made with the records kept by CJIS. This is to make sure your information is not released to an unauthorized person.
- ☒ We are searching the indices to our central records system at FBI Headquarters for the information you requested, and will inform you of the results as soon as possible.
- ☐ Processing delays have been caused by the large number of requests received by the FOIPA. We will process your request(s) as soon as possible.

Your request has been assigned the number indicated above. Please use this number in all correspondence with us. Your patience is appreciated.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over a horizontal line.

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division





U.S. Department of Justice

**Federal Bureau of Investigation**

*Washington, D.C. 20535*

*September 7, 2006*

MR. ZHEN TAO  
5851 CARMEL WAY  
UNION CITY, CA 94587

Request No.: 1056234- 000  
Subject: TAO, ZHEN

Dear Requester:

— This is in response to your Freedom of Information-Privacy Acts (FOIPA) request noted above.

To promptly respond to requests, we concentrate on identifying main files in the central records system at FBI Headquarters. No records responsive to your FOIPA request were located by a search of the automated indices.

You may file an administrative appeal by writing to the Co-Director, Office of Information and Privacy, United States Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, within sixty days from the date of this letter. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Please cite the FOIPA number assigned to your request so that it may be easily identified.

Enclosed for your information is a copy of the FBI File Fact Sheet.

Sincerely yours,

A handwritten signature in black ink, appearing to read "D. Hardy", is written over the typed name.

David M. Hardy  
Section Chief,  
Record/Information  
Dissemination Section  
Records Management Division

Enclosure

FORTNEY PETE STARK  
13TH DISTRICT, CALIFORNIA

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ON TAXATION

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CONGRESS OF THE UNITED STATES  
HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

December 12, 2006

Zhen Tao  
58551 Carmel Way  
Union City, CA 94587

Dear Mr. Tao:

Ref: A75 643 517

Thank you for contacting me for assistance.

I have given the information you provided to the appropriate authority. They are aware of my interest in the case, and I'll let you know as soon as I receive a reply. If I have not received a reply after thirty (30) days, I will make a follow-up inquiry on your behalf.

Sincerely,



Pete Stark  
Member of Congress

FHS/js

FORTNEY PETE STARK  
13TH DISTRICT, CALIFORNIA

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(202) 225-5065

39300 CIVIC CENTER DRIVE, SUITE 220  
FREMONT, CA 94538  
(510) 494-1388

PETEMAIL@MAIL.HOUSE.GOV

January 3, 2007

Zhen Tao  
58551 Carmel Way  
Union City, CA 94587

Dear Mr. Tao:

Ref: A75 643 517

In reply to my inquiry on your behalf, the US Citizenship and Immigration Services has informed me that your case is pending resolution of the background check. A final decision cannot be made on any application until all national security checks are complete. Various authorities in Washington, D.C. are involved and there is no estimated processing time for completion of this action.

I understand that this may be discouraging, but processing cannot resume until all security clearances have been resolved. If you have not received correspondence from USCIS by May 2007, please contact my district office and I will make a follow-up inquiry.

I hope the information is helpful.

Sincerely,



Pete Stark  
Member of Congress

FHS/jl